

TITANIUM INDUSTRIES, UK Ltd
TERMS AND CONDITIONS OF SALE AND DELIVERY
(Including security provisions)

The following sets forth the terms and conditions governing the sale of goods of Titanium Industries, UK Ltd. ("Titanium" or the "Seller"). All terms and conditions are subject to change from time to time in the sole discretion of Seller. It is expressly agreed by you (hereinafter referred to as the "Buyer") that (i) Seller's acceptance of any purchase orders or similar orders for goods (each a "Buyer's Order"); and (ii) any quotation provided by Seller, any Buyer Order issued as a result of such quotation and any sale resulting from such quotation, are expressly conditioned on your agreement to the terms and conditions set forth herein in their entirety and your agreement that such terms and conditions shall constitute the sole terms and conditions governing any Buyer Order, quotation or sales of Seller. **THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER TERMS AND CONDITIONS AND NO CONTRARY, ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SHALL BE BINDING ON SELLER UNLESS EXPRESSLY AGREED TO IN WRITING BY AN AUTHORIZED OFFICER OF SELLER. SELLER HEREBY REJECTS ALL ADDITIONAL, CONTRARY OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY BUYER IN ANY BUYER ORDER OR OTHERWISE, AND NO SUCH ADDITIONAL, CONTRARY OR DIFFERENT TERMS OR CONDITIONS SHALL BE BINDING ON SELLER.**

1. **Payment Terms:** Unless otherwise stated, the terms of payment will be net thirty (30) days from invoice date, with interest at the rate of the lower of 10% per annum or the maximum rate allowable by law per annum on the unpaid balance on all invoices not paid when due. Unless otherwise stated, all prices are F.O.B. Seller's plant and cover bulk packaging only.
2. **Variations:** Shipments will be subject to a quantity and/or variation of $\pm 15\%$, the same to be accepted by Buyer as compliance with the contract. Reorders will be deemed as having been placed under the same terms and conditions as are set forth herein unless such orders are placed under a revised written quotation (and/or offer) and accepted in accordance with paragraph 3 hereof. Unless otherwise stated therein, all quotations are subject to change without notice. Prices shown in published price lists, brochures, and other literature or marketing materials shall be considered only a guidance, and are not offers to sell and are subject to confirmation by specific quotations.
3. **Acceptance:** This offer by Seller may be accepted only in writing by Buyer or its authorized representative, and once having been accepted by Buyer, shall be binding upon the parties only if and when approved by a duly authorized officer of Seller at Birmingham, UK; *provided, however*, that, if not sooner accepted in writing by Buyer, if this offer (containing these terms and conditions) is sent to Buyer contemporaneously with or accompanying Seller's shipment of any of the goods covered hereby, then this offer (containing these terms and conditions without addition or modification) shall be deemed accepted in its entirety by Buyer upon Buyer's acceptance, in whole or in part, of the tender of delivery of such shipment. This offer (containing these terms and conditions without addition or modification), once so accepted and approved (the contract resulting thereby is herein referred to as the "Agreement"), is intended by the parties to be, and shall be, the final expression of their agreement with respect to the subject matter hereof, and as a complete and exclusive statement of its terms. No course of prior dealing between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms hereof. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible in determining the meaning of this Agreement, even though the accepting or acquiescing party has knowledge of the nature of performance and an opportunity to make objection. No understandings, representations or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. Acceptance (or deemed acceptance) by Buyer of this offer (containing these terms and conditions without addition or modification) shall constitute an agreement upon the part of Buyer to the terms and conditions hereof, which shall supersede all prior or contemporaneous agreements (whether oral or written) with respect to the subject matter hereof. If Buyer, in lieu of accepting this offer in the manner contemplated by this paragraph 3, forwards to Seller a Buyer Order for the goods covered hereby, and if such Buyer Order is received by Seller prior to any shipment of the goods covered hereby, such action shall be deemed to be Buyer's acceptance of this offer upon the terms and conditions set forth herein without addition or modification, subject to the approval by Seller from one or more of its authorized officers, at Birmingham, UK, notwithstanding the fact that the Buyer Order may contain terms contrary to, different from or additional to those contained herein, in which event, such contrary, different or additional terms shall be null and void and not binding on Seller, but such nullity shall not affect the formation of the contract between Buyer and Seller on the terms herein set forth. Buyer's forwarding of a Buyer Order received by Seller at any time subsequent to Seller's shipment of all or any part of the goods covered hereby shall be a nullity and of no legal effect whatsoever. This offer is not a firm offer and may be revoked or withdrawn at any time prior to Buyer's acceptance in accordance with this paragraph 3. This offer is for acceptance by Buyer within thirty (30) days and is subject to change or withdrawal by Seller at any time prior thereto without notice to Buyer.
4. **Order Cancellation/Rescheduling:** Any requests by Buyer for cancellation of any Buyer Order must be received by Seller in writing. Any cancellation by Buyer of all or any part of any Buyer Order received or accepted by Seller is subject to a 30% cancellation charge. Reschedules (delays/push-outs) may be accommodated at Seller's discretion. A reschedule approved by Seller in writing which is more than thirty (30) days after the original scheduled delivery date is, at Seller's discretion, subject to a 5% rescheduling charge for each thirty (30) days of schedule extension. A request by Buyer to reschedule beyond thirty (30) days from the original scheduled delivery date may be considered a cancellation and subject to the above-referenced 30% cancellation charge.
5. **Packaging, Shipment and Risk of Loss:** Unless otherwise stated, all prices cover bulk packaging only, all goods are sold F.O.B. Titanium's plant and all risk of loss or damage in-transit shall pass to Buyer at the time the goods are made available to a carrier at Seller's plant.
6. **Taxes:** Buyer agrees to pay any and all sales taxes, tariffs, surtaxes, excise taxes, and use taxes which either Buyer or Seller may become legally liable for as a result of this transaction.
7. **Patents, Trademark and Copyright Indemnity:** Buyer assumes all liability for infringement of patents, copyrights or trademarks, and shall defend, indemnify, and hold harmless Seller from and against any and all claims, losses, liabilities, damages and costs, including, without limitation, legal fees, arising from or in connection with any suit, claim or proceeding of alleged infringement of any intellectual property rights.
8. **Delivery/Force Majeure:** Seller shall not be liable in any way (for damages or otherwise) resulting directly or indirectly from any delay in performance or delay in delivery due to unforeseen circumstances or caused by circumstances beyond its control, including, without limitation, an act of God, fires, floods, acts of terrorism, wars, government actions, accidents, labor troubles, labor shortages, strikes, lockouts, embargos, riots, any national emergency, Buyer caused delays, compliance with any law, regulation or order, unavailability of materials, unavailability of equipment, or unavailability of transportation. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution.
9. **WARRANTIES; DISCLAIMER OF ALL OTHER WARRANTIES:** Seller warrants that the goods sold hereunder shall substantially conform to the written description and specifications furnished by Buyer and appended to this offer, subject to the customary mill tolerances and normal variations consistent with good mill practices and inspection methods with respect to dimension, weight, straightness, section, composition mechanical properties, surface and internal conditions and quality. **THERE ARE NO EXPRESS WARRANTIES INVOLVED IN THIS TRANSACTION OTHER THAN THE WARRANTY STATED IN THIS PARAGRAPH 9. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION APPEARING ON THE FACE HEREOF. THE WARRANTY IN THIS PARAGRAPH 9 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES AND SELLER SHALL HAVE NO LIABILITY FOR ANY CLAIM EXCEPT AS EXPRESSLY PROVIDED HEREIN. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, USAGE OF TRADE OR FITNESS FOR A PARTICULAR PURPOSE. DEFECTIVE GOODS MUST BE HELD FOR SELLER'S INSPECTION AND RETURNED TO THE ORIGINAL POINT OF DELIVERY. NOTWITHSTANDING THE FOREGOING, IN THE EVENT AND TO THE EXTENT THAT ANY OF THE GOODS COVERED HEREBY (OR ANY COMPONENTS THEREOF) ARE MANUFACTURED OR PROCESSED BY ANY THIRD PARTY, SELLER SHALL HAVE NO LIABILITY FOR DEFECTS IN PRODUCTS MANUFACTURED OR PROCESSED BY SUCH**

THIRD PARTY AND SELLER'S SOLE OBLIGATION WITH RESPECT TO SUCH GOODS (OR COMPONENTS) SHALL BE TO ASSIGN TO BUYER (IF AND TO THE EXTENT ASSIGNABLE) ALL WARRANTIES MADE OR GIVEN TO SELLER BY SUCH THIRD PARTY MANUFACTURER AND/OR PROCESSOR; IN SUCH EVENT, SELLER GIVES NO OTHER WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES ARE FULLY AND FOREVER DISCLAIMED.

10. **Claims for Defective Goods:** Any claims for breach of warranty (if any) must be reported in writing to Seller, in sufficient detail to fully apprise Seller of the claimed defect within thirty (30) days after delivery of the goods at the destination specified by Buyer. Any such goods so returned shall, at Seller's election (exercisable in Seller's sole discretion), be replaced as originally ordered within the limitations of paragraph 2 hereof; if Seller elects not to replace the defective goods properly returned to Seller, then the price paid by Buyer for such goods shall be credited to Buyer. **THE FOREGOING SHALL BE SELLER'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO BREACHES OF WARRANTY, DEFECTIVE GOODS OR OTHERWISE UNDER THE WARRANTY PROVISIONS CONTAINED HEREIN, AND SELLER'S LIABILITY, IN CONTRACT, TORT OR OTHERWISE, ARISING FROM ANY DEFECTIVE GOODS IS LIMITED TO THE REPLACEMENT OF THE DEFECTIVE GOODS OR TO THE PRICE OF THE DEFECTIVE GOODS, AND SELLER WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OF PROFITS, LOSS OF USE OR INCIDENTAL, SPECIAL, CONTINGENT, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OR CAUSE OF ACTION, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL THE LIABILITY OF SELLER TO BUYER ARISING UNDER OR IN CONNECTION HEREWITH EXCEED THE ORIGINAL INVOICE AMOUNT OF THE DEFECTIVE GOODS RETURNED.** No goods which are claimed to be defective shall be returned to Seller without first notifying Seller in writing (by facsimile or certified mail), and receiving shipping instructions from Seller. In all events, the transportation charges on returned goods will be paid by Buyer. **THERE SHALL BE NO REVOCATION OF ACCEPTANCE OF GOODS, WHICH RIGHT TO REVOKE ACCEPTANCE OF GOODS, BUYER HEREBY EXPRESSLY WAIVES. BUYER MAY REJECT THE GOODS COVERED HEREBY ONLY FOR DEFECTS SUBSTANTIALLY IMPAIRING THEIR VALUE AND FOR NO OTHER REASON. BUYER'S EXCLUSIVE REMEDIES FOR LESSER DEFECTS SHALL BE FOR BREACH OF AN EXPRESS WARRANTY, AND THEN ONLY TO THE EXTENT APPLICABLE TO ANY EXPRESS WARRANTY CONTAINED HEREIN.** Seller will not allow claims and no claims are permitted on goods further processed by Buyer.
11. **Damages:** In the event Buyer wrongfully rejects, revokes or unduly delays acceptance of the goods covered hereby, Seller, at its sole option, shall have the right to recover as damages either (i) the purchase price of the goods, whereupon the goods in such conditions as they may then exist shall become property of Buyer, or (ii) the profit (including reasonable overhead) realizable by Seller upon full performance. In either event, Seller may recover all incidental damages and reasonable costs, including, in the event Seller elects (i) above all reasonable charges for storage, handling and preservation of the goods until the same are claimed by Buyer. Seller's remedies set forth in this paragraph 11 are supplemental to, and not in lieu of, any and all remedies otherwise available to Seller at law, in equity, or hereunder.
12. **Claims for Defects in Delivery/Shortages:** All claims for defects in delivery of goods or for shortage of goods shall be deemed waived unless presented in writing (by facsimile or certified mail) by Buyer to Seller within thirty (30) days after delivery of the goods at the destination specified by Buyer in the relevant Buyer Order.
13. **Raw Materials:** Where the materials out of which the goods to be sold hereunder are specified, Seller warrants that all goods supplied hereunder will be manufactured from such materials which are so designated or described by the manufacturer or supplier of the raw materials. However, Seller shall not in any event be liable for, and Buyer assumes the entire risk of all losses caused by, any deficiencies, limitations, modifications or variations in the specified raw materials, which materials are designated or described by the manufacturer or supplier thereof in a manner which conforms to the specifications.
14. **Indemnity:** Buyer assumes all liability (including but not limited to liability for injury to person or property, economic loss or business interruption) for claims arising from the sale or use of the goods or goods covered by this agreement. Buyer further agrees to defend, indemnify, and hold harmless Seller, its officers, directors, employees and agents from any and all liability, claims, losses, demands, actions, suits, costs and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with the sale or use of any goods or product covered by this agreement. Buyer shall also defend, indemnify, and hold harmless Seller, its officers, directors, employees and agents from any and all liability, claims, losses, demands, actions, suits, costs and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with Buyer's breach of these terms and conditions herein.
15. **Security Agreement:** For so long as any amount remains to be paid by Buyer to Seller, whether such obligations arose under this transaction or any other transaction between Buyer and Seller (collectively the "Secured Obligations"), then Seller shall have, and Buyer hereby grants to Seller, a lien and security interest in and to the goods sold hereby to Buyer (the "Collateral"), as security for the payment and/or performance of the Secured Obligations. In the event Buyer fails to perform any Secured Obligation in strict accordance with its terms, then Seller shall have the right to declare all Secured Obligations immediately due and payable and, further, to pursue all such rights and remedies as to the Collateral as are available under the Uniform Commercial Code, as well as all such other rights as are available at law, by statute or in equity.
16. **Limitation Period:** If either party to this agreement desires to bring an action against the other party for breach of this agreement, including any action by Buyer against Seller for the alleged breach of any warranty, the time within which the action must be commenced shall be one (1) year after the accrual of the cause of action as defined by Section 2-725(2) of the Uniform Commercial Code.
17. **Jurisdiction:** The rights and obligations of the parties under this Agreement shall **not** be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods; rather, it is intended that this contract shall be governed and construed, in all respects, in accordance with the laws of England, including, without limitation, its provisions of the Uniform Commercial Code. Any controversy or claim or dispute arising out of or related to this contract shall be litigated only in a court in England.
18. **Legal Costs:** If any legal proceeding is brought for the enforcement of any term, provision, covenant or agreement set forth herein, or because of a dispute, or an alleged breach, default or misrepresentation in any way connected herewith, or with any provision hereof, the successful or prevailing party shall be entitled to recover from the losing party the reasonable attorney's fees and other costs incurred in that action or proceeding or in any appellate proceeding relating thereto, such amount to be set by the court(s) before which the matter is tried, heard or decided.
19. **Export Compliance:** The sale of goods, services or the disclosure of information are subject to the USA Export Administration Regulations UK BERR Administration Regulations. The buyer agrees not to sell or solicit orders for the sale or re-export of the purchased goods to any restricted person, company, application or country.